

NOTE: CHANGES MADE BY THE COURT

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JERMAINE TOOMER, an
Individual,

) CASE NO.: CV14-02780 R (CWx)

) [Assigned to Judge Manuel L. Real.]

) Courtroom 81

) [Complaint Filed: February 18, 2014]

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COUNTY OF LOS ANGELES, a public entity; LEROY BACA, Individually and in his Official Capacity as Sheriff of the Los Angeles County Sheriff's Department; LAWRENCE SWANSON, an Individual; JONATHAN BRANHAM, an Individual; and DOES 1-25, Inclusive.

-) ORDER RE: UNCONTROVERTED
-) FINDINGS OF FACTS AND
-) CONCLUSIONS OF LAW RE:
-) GRANTING OF DEFENDANTS
-) MOTION FOR SUMMARY
-) ADJUDICATION

) Discovery Cut-off: Oct. 27, 2014

) Pretrial Conf: January 26, 2015

) Trial Date: February 17, 2015

Defendants.

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ORDER

Before the Court is Defendants' County of Los Angeles, Deputy Swanson and Deputy Branham's (collectively "Defendants") Motion for Summary Adjudication [Docket #18] filed on September 19, 2014. Having read and considered the moving and opposing documents, the Court hereby finds the following Uncontroverted Findings of Fact and Conclusions of Law:

a) Uncontroverted Findings of Fact:

1. There is no genuine dispute of material fact to support the Plaintiff's claim that Deputy Branham fired his gun at the Plaintiff.
2. There is no genuine dispute of material fact to support the Plaintiff's claim that Deputy Branham engaged in any physical contact with Plaintiff.
3. There is no genuine dispute of material to support the Plaintiff's claim that Deputy Branham engaged in the use of excessive force against the Plaintiff.
4. There is no genuine dispute of material fact to support Plaintiff's Fourth Cause of Action for Excessive Force under Section 1983 against Deputy Branham. Plaintiff's Fourth Cause of Action against Deputy Branham is dismissed.
5. There is no genuine dispute of material fact to support the Plaintiff's Fifth Cause of Action for Excessive force (§1983) Monell. Defendants Motion for Summary Adjudication on the Fifth Cause of Action is granted in its entirety.
6. There is no genuine dispute of material fact to support the Plaintiff's Sixth Cause of Action for Failure to Properly Screen and Hire 42 U.S.C. (§1983) Monell. Defendants Motion for Summary Adjudication on the Sixth Cause of Action is granted in its entirety.

- 1 7. There is no genuine dispute of material fact to support the Plaintiff's
- 2 Seventh Cause of Action for Failure to Train, Supervise and Discipline
- 3 (§1983) Monell. Defendants Motion for Summary Adjudication on this
- 4 cause of action is granted in its entirety.
- 5 8. Plaintiff's allegation of a single constitutional deprivation is insufficient to
- 6 establish a longstanding practice or custom for purposes of Monell liability.
- 7 9. There is no genuine dispute of material fact to support the Plaintiff's claim
- 8 that Defendants acted pursuant to any policy, custom or practice that
- 9 resulted in a violation of his constitutional rights.
- 10 10. Plaintiff's allegation of a single instance of a failure to screen is insufficient
- 11 to satisfy the requisite "deliberate indifference" standard.
- 12 11. There is no genuine dispute of material fact to support the Plaintiff's claim
- 13 that a review of Defendants' background would lead to a reasonable
- 14 policymaker to conclude the "obvious consequences" for the decision to hire
- 15 either of them would result in the deprivation of a third party's federally
- 16 protected rights
- 17 12. There is no genuine dispute of material fact to support the Plaintiff's claim
- 18 that Defendant County of Los Angeles had an unconstitutional policy,
- 19 practice or custom including failure to train.

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22 ***b) Conclusions of Law:***

- 23 13. Liability under Title 42 of U.S.C. §1983 arises only upon a showing of
- 24 personal participation by the defendant. *Taylor v. List* 880 F.2nd 1040 (Ninth
- 25 Circuit 1989)
- 26 14. A local government may be held liable under Title 42 U.S.C. §1983 only
- 27 when execution of a government's policy or custom, whether made by its

1 lawmakers or by those whose edicts or acts may fairly be said to represent
2 official policy inflicts the injury. *Meehan v. County of Los Angles* 856 F.2nd
3 102 (Ninth Circuit 1988).

4 15. Proof of a single incident of unconstitutional activity is not sufficient to
5 impose liability under Monell.

6 16. In the context of hiring decisions, “deliberate difference” is a stringent
7 standard of fault requiring proof that a municipality acted with disregard of a
8 known or obvious consequence of its actions.

9 17. A policy evinces deliberate indifference where the need for more or different
10 action is so obvious and the inadequacy of the current procedure is so likely
11 to result in a violation of constitutional rights that the policymakers can
12 reasonably be said to have been deliberately indifferent to the need. *Gant v.*
13 *County of Los Angeles*, 765 Fed. Supp. 2nd. 1238 (Central District of
14 California, 2011).

15 18. The inadequacy of police training may serve as a basis for §1983 liability
16 only where a municipality’s failure to train employees in a relevant respect
17 evidences a “deliberate indifference” to the right of its inhabitants.

19 19. Evidence of a failure to train a single officer is insufficient to establish a
20 municipality’s deliberate policy. *Blankenhorn v. City of Orange*, 485 F.3d
21 463, 484 (9th Cir. 2007).

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20. Supplemental jurisdiction is a doctrine of discretion not of plaintiff's right.

United Mine Workers of America v. Gibbs 383 U.S. 715, 726 (1966).

The only remaining cause of action before this Court is for excessive force under §1983 as to Deputy Swanson. Pursuant to Title 28, United States Code §1367(c) this Court declines to exercise supplemental jurisdiction as to all remaining state law claims, including assault, battery, negligence, violation of Civil Code 52.1, false arrest, false imprisonment, and intentional infliction of emotional distress. The state law claims are therefore dismissed without prejudice.

Dated: December 19, 2014

Reed

Hon. Judge Manuel L. Real
United States District Court Judge